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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/609,061

06/28/2003

Shaoling Li

ARC 3162 R1

6874

30766

7590

12/01/2006

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EXAMINER

SILVERMAN, ERIC E

ART UNIT

PAPER NUMBER

1615

DATE MAILED: 12/01/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/609,061

Applicant(s)

LI ET AL.

Examiner

Eric E. Silverman, PhD

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 October 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-44 and 61-63 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-44, 61-63 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 10/15/2006 has been entered.

Claims 1 – 44 and 61 – 63 are pending.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1 – 44, and 61 – 63 **remain** rejected under 35 U.S.C. 103(a) as being unpatentable over US 6,419,952 to Wong et al in view of US 5,800,422 to Dong et al. for reasons of record and those discussed below.

### ***Response to Arguments***

Applicants' arguments have been fully considered, but are not persuasive.

Applicants' have relied upon evidence in the specification as a showing of allegedly unexpected results. This is not persuasive because.

The evidence is not commensurate with the scope of the claimed invention. The evidence relied upon only shows results for the combination of one specific

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osmopolymer (NACMC), with one specific film former (NATROSOL) and one specific osmotic agent (NaCl). Instant claims, with the sole exception of claim 44, are all generic with respect to at least one of these agents. Note that claim 43 limits the film former, but does not require it to be NATROSOL (which is understood to be hydroxypropyl cellulose of a specific molecular weight distribution), and does not limit the identity of the osmotic agent of the osmopolymer. Thus, it cannot be said that the showing provides sufficient factual information to show what results would be obtained upon the combination of *any* osmopolymer, *any* film former, and *any* osmotic agent in the ratios of instant claims.

Claim 44 requires that the film-former comprise hydroxyethylcellulose, the osmopolymer comprise NaCMC and the osmotic agent comprise NaCl. However, the showing is not commensurate with this claim. The "comprise[ing]" language allows any other film-former, osmopolymer, or osmotic agent to be admixed with those specifically recited in the claim. The showing gives no information about whether the results hold for such mixtures. Further, the showing uses "NATROSOL", whereas the claim recites "hydroxyethylcellulose". As shown by the NATROSOL disclosure (see PTO 892), NATROSOL is available in a variety of different types, having different properties such as particle size, solubility and viscosity limits. It is not clear what type of "NATROSOL" was used in the showing, and thus it is not clear that the showing of a specific type of hydroxyethylcellulose is commensurate in scope with the claim, which is generic to any hydroxyethylcellulose.

### **Conclusion**

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No claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric E. Silverman, PhD whose telephone number is 571 272 5549. The examiner can normally be reached on Monday to Friday 7:30 am to 4:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Woodward can be reached on 571 272 8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Eric E. Silverman, PhD  
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